



Security Council

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Letter dated 17 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/909). The Counter-Terrorism Committee has received the attached third report from Namibia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Inocencio F. Arias
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Letter dated 12 February 2004 from the Permanent Representative of Namibia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Please find enclosed the third report of the Government of the Republic of Namibia submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure). A copy of the Namibian Arms and Ammunition Act, 1996, is also enclosed.

(Signed) Martin Andjaba
Ambassador
Permanent Representative

Enclosure***Third Report of the Government of the Republic of Namibia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)**

The third report is being submitted in response to the Counter-Terrorism Committee's further questions and comments as contained in its letter dated 25 July 2003.

Paragraph 1:

1.2. Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalizing the willful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as describe above it is not necessary that the funds be actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- The only related terrorist act takes place or is intended to take place outside the country;
- No related terrorist act actually occurs or is attempted;
- No transfer of funds from one country to another takes place;
- The funds are legal in origin.

The CTC would appreciate receiving an outline of legal provisions in Namibia which fully comply with this aspect of the Resolution or in their absence an indication from Namibia of the steps it intends taking in order to fully comply with this aspect of the Resolution.

Response

Currently there is no law which complies with this aspect of the Resolution. However, Namibia is in the process of finalizing Anti-Terrorism Activities Bill which intends to cover the said aspect of the resolution.

1.3. In its second report (at page 1) Namibia indicates that section 50 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) requires all commercial banks to report to the Bank of Namibia any suspicious transaction. Sub-paragraph 1 (a) of the Resolution requires a State to impose a legal obligation on banks and financial institutions and other financial intermediaries (such as lawyers, notaries and accountants when engaged in brokering activities) to report suspicious transactions to the financial intelligence unit or other relevant authorities. The CTC would

* Annexes are on file with the Secretariat and are available for consultation.

appreciate an outline of the legal provisions which fully meet the requirements of sub-paragraph 1 (a) of the Resolution or in their absence, an indication of the steps which Namibia intends taking in order fully to meet the requirements of this sub-paragraph.

Response

Section 50 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) places a duty on commercial banks to report to the Bank of Namibia any suspicious transactions. This law is not applicable to non-banking institutions and other financial intermediaries. The Government is currently considering an Anti-Money Laundering Bill which would place such an obligation on the category of persons in question.

- 1.4. The CTC notes that, according to Namibia's second report (at page 1), the requirement of banks to report suspicious transactions aimed at uncovering cases of money laundering could be extended, with the passing of the Anti-Terrorism Activities Bill, to include the funding of terrorism. The CTC would appreciate receiving an outline of and a progress report on the relevant provisions of the Anti-Terrorism Bill.

Response

The relevant provisions are contained in Chapter 2 of the Draft Anti-Terrorism Bill, in particular under the headings "Fund-raising" and "Funding arrangements", which read as follow:

"Fund-raising

6. (1) any person who-

- (a) invites another to provide money or other property; or
- (b) receives money or other property; or
- (c) provides money or other property; and
- (d) intends that such money or other property or any part thereof to be used or ought to have known, or suspected that the money or other property or any part thereof may be used, for the purposes of terrorism,

commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years, without the option of a fine.

- (2) In this section a reference to the provision of money or other property or part thereof is a reference to the money or other property or part thereof being given, lent or otherwise made available".

"Funding arrangements"

7. Any person who enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and he or she knows or to have known or suspect or ought to have suspected that it will or may be used for the purposes of terrorism commits an offence and is liable on conviction to imprisonment for a period not exceeding twenty years, without the option of a fine".
- 1.5. The CTC would appreciate receiving additional information regarding legislation and/or other instruments in place requiring financial institutions to include originator information (name, address, account number) on fund transfers. In addition, the CTC would be content to learn what instruments are in place for licensing and/ or registering persons or legal entities that transmit money or value, including non-depository, money service businesses?

Response

In terms of a Determination on Money Laundering and "know your customer Policy" (BID-3) issued by the Governor of the Bank of Namibia in terms of section 71 (3) of the Banking Institutions Act, banking institutions within Namibia are required to keep originator information on persons or institutions with which they deal. This is not applicable to non-banking institutions. Non bank financial institutions must be licensed or registered by the Namibia Financial Institutions Supervisory Authority (NAMFISA) to conduct business. These institutions include private pension funds, stock exchanges, investment managers, money lenders, insurance companies and intermediaries etc.

- 1.6. In its reply to sub-paragraph 1 (c) of the Resolution, Namibia indicates in the second report (at page 2) that under Regulation 4 of the Exchange Regulations, the Bank of Namibia has the power to freeze the accounts of persons transferring funds to specific persons or institutions such as those identified in United Nations Security Council Resolution 1267 (1999). Sub-paragraph 1 (c) of the Resolution requires that States freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit, attempt to commit or participate in or facilitate the commission of terrorist acts. It should be noted that, for this purpose, the funds and other financial resources need not represent the proceeds of crime, but could be legal in origin and yet be used to fund terrorist activities either within or outside the territory of Namibia. The CTC would appreciate receiving an outline of the legal provisions which fully meet the requirements of this sub-paragraph or, in their absence, an indication of the steps which Namibia intends taking in order fully to meet the requirements of this sub-paragraph of the Resolution. The CTC would further appreciate knowing whether Namibia can freeze funds suspected of being related to terrorism at the request of another State.

Response

Namibia's response on the implementation of sub-paragraph 1 (c) of the Resolution is reflected on page 4 of the Security Council Document S/2003/494. There seems to be no specific provision that Namibia could freeze funds suspected of being related to terrorism at the request of another State. However, Namibia having acceded to Article VIII, section 2(b) Agreement of the IMF can block funds suspected of being related to terrorism at the request of another IMF/World Bank Member State, provided that there was a contravention of that Member State's exchange control regulations.

- 1.7. Effective implementation of sub-paragraph 1 (d) of the Resolution requires a State to have in place a mechanism to register, audit and monitor the collection and use of funds and other resources by religious, charitable and other associations, with a view to ensuring that these are not diverted from purposes other than their stated purposes, in particular to the financing of terrorism. The CTC would be grateful to receive an outline of the legal provisions which fully meet the requirements of this sub-paragraph of the Resolution or in their absence an indication from Namibia of the steps which it intends taking in order fully to meet the requirements of this sub-paragraph.

Response

The relevant provisions which are intended to address this sub-paragraph are contained in the Draft Anti-Terrorism Activities Bill, which is quoted hereunder:

- "6. (1) Any person who directly or indirectly in any manner –
- (a) provides material, logistical or organizational support or any resources;
 - (d) uses property, directly or indirectly, in whole or in part;
 - (e) possesses property intending that it be used directly or indirectly in whole or in part,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding thirty years, without the option of a fine".

- 1.8. Sub-paragraph 2 (a) of the Resolution requires each State to criminalize within its territory the recruitment of persons with a view to their joining terrorist groups, operating inside or outside its territory. It is to be noted in this regard that it is not always the case that a recruiting agent will belong to a criminal or terrorist organization. The possibility exists that recruitment may be carried out by deception. For example, the putative purpose of recruitment may be one (e.g. teaching) which differs from its true purpose. Namibia indicates in its second report (at page 3) that the Defence Act 2002 does not directly prohibit the recruitment of members of terrorist groups. However according to the report,

Chapter 2 of the Defence Act 2002 deals with membership of terrorist organizations. It appears that Namibia does not have legal provisions which fully meet the requirements of this sub-paragraph of the Resolution. The CTC would be grateful to receive an indication from Namibia of the steps which it intends taking in order fully to meet the requirements of this sub-paragraph of the Resolution.

Response

The Counter-Terrorism Committee's comment as stated in this sub-paragraph does not reflect Namibia's response as contained on page 4 of the Security Council Document No. S/2003/494 dated 25 April 2003. The CTC should read once again Namibia's second report. It was not reported that "Chapter 2 of the Defence Act 2002 deals with membership of terrorist organizations". But that **The Defence Act, 2002 does not directly prohibit recruitment of members of terrorist groups. However, if passed by Parliament, the proposed Anti-Terrorism Activities Bill, Chapter 2 deals with "Membership of terrorist organizations".**

- 1.9. The CTC notes, in Namibia's second report (at page 3) that the Arms and Ammunitions Act, 1996 prohibits the buying and selling of firearms without a licence. The CTC would appreciate receiving an outline of the relevant provisions of the Act.

Response

The relevant provisions are in chapters 1, 3, 4 and 6. However, as these provisions refer to others, a copy of the Arms and Ammunition Act, 1996, is enclosed.

- 1.10. In reply to sub-paragraphs 2 (c), (d) and (e) of the Resolution, Namibia indicates, in its second report (at page 3), that the Anti-Terrorism Activities Bill under the heading "prohibition of rendering assistance and support" addresses the provisions of these sub-paragraph. The CTC would be grateful to receive a progress report of the enactment and an outline of the relevant provisions of the Bill.

Response

The Bill is currently with the Legal drafters. The relevant provisions are quoted hereunder:

- "6. (1) Any person who directly or indirectly in any manner –
- (a) provides material, logistical or organizational support or any resources;
 - (b) conceals or disguises the nature, location, source, or ownership of the resources mentioned in sub-paragraph(a), or the nature of the support or resources referred to in paragraph(a), or

- (c) arranges, manages, addresses or assists in arranging, managing or addressing a meeting;
- (d) uses property, directly or indirectly, in whole or in part;
- (e) possesses property intending that it be used directly or indirectly in whole or in part;
- (f) knows or ought to have known that such assistance, support or resources are calculated or intended to be used -
 - (i) in the commission of an offence under this Act; or
 - (ii) in the concealment of the commission or attempted commission of an offence or to facilitated the escape of a person who had committed or attempted to commit an offence under this Act; or
- (g) participates or attempts to participate in the activities of a terrorist organization,

shall be guilty of an offence and is liable on conviction to imprisonment for a period not exceeding thirty years, without the option of a fine.

- (2) Support under subsection (1) includes but is not limited to:
 - (a) an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist organization;
 - (b) an offer to provide, or the provision of a skill or an expertise for the benefit of, at the direction of or in association with a terrorist organization; or
 - (c) entering or remaining in any country for the benefit of, or at the direction of or in association with a terrorist organization."

1.11. Section 2 (g) of the Resolution deals, amongst other things, with border controls. In that respect Namibia's supplementary report notes (at page 5) steps taken to computerize its border posts and immigration services. The CTC would appreciate receiving additional information on the nature and extent of Namibia's efforts in this respect.

Response

All but three border Posts are fully computerized with regard to customs entry and clearance of goods.

1.12. What competence have the courts of Namibia to deal with the following kinds of criminal acts:

- an act committed outside Namibia by a person who is a citizen of, or habitually resident in Namibia (whether that person is currently present in Namibia or not);
- an act committed outside Namibia by a foreign national who is currently in Namibia?

Response

As a general principle, courts in Namibia do not have jurisdiction to try offences committed outside Namibia except as indicated hereunder.

Courts in Namibia exercise jurisdiction with regard to offences committed outside Namibia by a person who is a citizen or residing in Namibia in the following offences:

- (a) High treason (provided the offender owes allegiance to Namibia);
- (b) Theft (because it is a continuous offence);
- (c) Offences committed on Namibian ships whether on territorial waters or not (Merchant Shipping Act, No 57 of 1951);
- (d) Offences committed on Namibian aircraft wherever they might be in the world (section 18 of Aviation Act, No 74 of 1962);
- (e) Offences committed on any aircraft provided such aircraft lands in Namibia with the offender on board or that the offender is present in Namibia (Civil Aviation Act, No 10 of 1972);
- (f) A Namibian citizen may be prosecuted and punished in Namibia for any extraditable offence which that citizen committed in a foreign country provided that, an extradition request for that person was made and the person cannot be extradited by virtue of his or her Namibian citizenship and the Prosecutor General of Namibia has authorized the prosecution of such person;
- (g) Namibian courts are competent to recover a fine, to enforce a compensatory order, confiscation order and a restraint order issued by a foreign State against any person whether or not he is in Namibia provided the person concerned holds property in Namibia (sections 15, 20, and 24 of the International Cooperation in Criminal Matters Act, No 9 of 2000);
- (h) Namibian courts are competent to conduct extradition proceedings against any foreign national who is in Namibia.

1.13 In response to sub-paragraphs 3 (b) and (c) of the Resolution, in its second report (at pages 4 and 5), Namibia states that its legislation provides for extradition either through the conclusion of extradition agreements with other countries or by the

designation of specific countries to which it is prepared to extradite. The CTC notes from the second report that, as of now, Namibia has not conclude any extradition agreements, whether of a bilateral or a multilateral nature, with other States, nor has it designated any countries to which extradition may be effected. Nevertheless, Namibia has provided a list of States which have been designated for extradition and mutual legal assistance. The CTC would appreciate receiving clarification in relation to this apparent contradiction. The CTC would also appreciate receiving information on the manner in which Namibia deals with requests for extradition and mutual legal assistance.

Response

No contradiction at all. The members of the CTC are encouraged to read that paragraph once again, as contained on page 6 of the Security Council Document S/2003/494 of 25 April 2003. Namibia does not have extradition or mutual legal assistance agreements with any country at the moment, but it has designated countries mentioned in the list. Extradition or mutual legal assistance relations can be established by either of the two means i.e. an agreement or designation but not both of them in respect of the same State.

Requests for extradition are made in writing to the Minister of Justice by the Diplomatic or Consular representative of the requesting State, or by Interpol on behalf of the requesting State. The Ministry of Justice has a central authority that receives and processes all incoming and outgoing extradition requests. Upon receipt of an extradition request from a designated State, the Minister of Justice if he or she is satisfied that the fugitive can be surrendered to the requested State, issue an authority to proceed. The authority to proceed is directed to a magistrate. When the Magistrate receives the extradition documents, and the warrant of arrest is properly authenticated, the Magistrate shall endorse the warrant of arrest and whereupon the warrant of arrest shall be executed. Once the fugitive has been arrested he or she must be brought before a Magistrate within 48 hours of his or her arrest. Thereafter the Magistrate must conduct an extradition inquiry. The Extradition Act requires **dual criminality** (an offence punishable by imprisonment in the requesting State and in Namibia for a period of 12 months or more). **Prima Facie evidence** of the commission of the offence is also a prerequisite. If at the end of the inquiry the Magistrate is satisfied that the fugitive is liable for surrender, the Magistrate shall issue an order committing the fugitive to prison pending the decision of the Minister of Justice. The fugitive may within 14 days after the committal order of the Magistrate is issued, appeal to the High Court. If the Minister of Justice is satisfied that the return of the fugitive is not prohibited by any law he or she may issue a written order for the surrender of the fugitive to the requesting State.

Mutual legal assistance can only be rendered to a country that is designated or where there is an agreement between Namibia and that country for mutual legal assistance. The nature of legal assistance that Namibia can render is executing letters of request, recovery of fines, executing compensatory orders, confiscation orders and restraint orders. Requests for mutual legal assistance should be directed to the Permanent Secretary for Justice or directly to the relevant court having jurisdiction. After receipt of requests for

execution of letters of requests, recovery of fines, compensatory orders and confiscation orders they are registered by the relevant court and thereafter they may be executed. With regard to letters of request the record of the evidence is immediately transmitted to the requesting State. Monies recovered for compensatory orders, fines, and confiscation orders are paid to the requesting State.

- 1.14 Namibia indicates in its first report (at page 3) that it has signed the Convention for the Suppression of the Financing of Terrorism. In its second report (at page 6), it indicates that it has acceded to the Convention on the Physical Protection of Nuclear Material. The CTC would be grateful for a report on the implementation in domestic law of the two conventions to which Namibia is a party. In addition, the CTC would also appreciate a progress report on Namibia's becoming a party to the ten conventions and protocols relating to terrorism to which it has yet to become a party.

Response

Indeed Namibia has signed the Convention for the Suppression of the Financing of Terrorism. But it has not ratified it. Thus, it is not yet a party to that Convention. With regard to the Convention on Physical Protection of Nuclear Material, there is no specific law adopted immediately after Namibia's accession to this Convention intended to implement it. The eleven conventions and protocols are still under consideration by the relevant ministries and institutions.

- 1.15. Sub-paragraph 3 (g) of the Resolution requires that States should ensure that claims of political motivation are not recognized as grounds for the refusal of requests for extradition of alleged terrorists. The CTC would appreciate hearing how Namibia would deal with an alleged terrorist who claimed political motivation for committing terrorist acts.

Response

In terms of section 5(1)(a) of the Extradition Act, No 11 of 1996 a person shall not be extradited or kept in custody for purposes of extradition if the offence for which is sought for is an offence of a political nature. Up to date Namibian courts have not yet dealt with a case where the political offence exception was raised. It remains to be seen how Namibian courts will deal with the political offence exception whenever it will be raised in any given case in the future.

- 1.16 The CTC is aware that Namibia may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Namibia's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of the Resolution.

Response

Namibia has not submitted reports or questionnaires related to this subject to other organizations.